HON'BLE MR JUSTICE A. GOPAL REDDY

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WRIT PETITION NO.21516 OF 1994

DATE:02.03.2006

Between:

Kumari P. Subhadra

..... PETITIONER

AND

Mandal Revenue Officer, Golconda Mandal,

Hyderabad District and two others.

.....RESPONDENTS

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W.P. No.21516 OF 1994

ORDER:

The petitioner claims to have purchased plot No.6, admeasuring 402 sq.yds (336 sq.mts.) in S.No.403/5 at Shaikpet village, Yousufguda from the Women's Cooperative Housing Society and the then Secretary of the said Society executed a registered sale deed in favour of the petitioner in respect of the said plot, vide document No.1704 of 1975 on 17.6.1975. The petitioner was also permitted to construct a house upon the said plot by relaxing the lay out rules and on payment of betterment charges, through G.O. Rt. No.641, MA, dated 15.5.1986. Accordingly, after obtaining necessary permission from the Municipal Corporation of Hyderabad ('MCH'), the petitioner constructed a house and the same was also assessed to municipal tax. Thus the petitioner has been in continuous and uninterrupted possession of the said property from 17.6.1975. While so, the first respondent issued the proceedings on 30.8.1994 treating the petitioner as an encroacher of the Government land and requiring her to vacate the land within seven days. Challenging the said proceedings, this writ petition is filed alleging that the respondents have not followed the due procedure before passing the impugned orders as the notice under Section 7 of the A.P. Land Encroachment Act, dated 23.7.1994 was issued to a wrong person in the name of one P. Satyanarayana with the address of the petitioner's plot and therefore, the petitioner was deprived of submitting her explanation.

In the affidavit filed in support of the writ petition, the petitioner made a categorical assertion that the property stands in her name and without mentioning her name, the notice under Section 7 of the A.P. Land Encroachment Act, was served on a person other than the petitioner under the mistaken identity and the respondents are threatening to dispossess her from the property without following due process of law.

Even after eleven years of filing the writ petition, the respondents have not chosen to file a counter affidavit contradicting the averments made in the writ petition.

This Court in identical matter in W.P.No.17385 of 1994 set aside the impugned order therein and directed the respondents not to take any action in execution of the order and if there was any mistake in describing the land, which was subject matter of the impugned order, the respondents are under obligation to notify the correct description of the land held by the petitioner therein and without being provided any opportunity of hearing, the petitioner should not be evicted.

Coming to the case on hand, in the notice issued under Section 7 of the A.P. Land Encroachment Act, dated 23.7.1994 the name of the encroacher is mentioned as P. Satyanarayana with regard to plot No.6, but not the name of the petitioner. It is well settled that under Section 3 of the Transfer of Property Act, registration of the property in the name of a person, is deemed to be a notice to all the concerned. In view of the same, issuance of final proceedings without serving prior notice as contemplated under the said Act, cannot be sustainable.

Under those circumstances, the impugned proceedings are hereby declared as null and void and the respondents are restrained from dispossessing the petitioner from the plot in question under the guise of the impugned proceedings. It is made clear that if the land which is in occupation of the petitioner is a Government land, it is always open for the respondents to take steps for eviction of the petitioner by following due procedure.

The writ petition is accordingly disposed of. No costs.

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A. GOPAL REDDY, J

02nd MARCH, 2006.

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